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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY B. SHELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 24A01-0605-CR-202
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0312-FB-808

January 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Jeffrey B. Shelton ("Shelton") appeals his conviction for Dealing in a Controlled Substance, a Class B felony,[1] for which he received a twenty-year sentence. We reverse and remand with instructions.

Issue

Shelton presents three issues for review. We address the dispositive issue: whether the State presented sufficient evidence that Shelton possessed methamphetamine with the intent to deliver it.

Facts and Procedural History

At approximately 2:00 a.m. on December 27, 2003, Franklin County Sheriff's Department Reserve Officer Dusty Hill ("Officer Hill") saw Shelton and C.V. Moore ("Moore") walking on Main Street near the courthouse in Brookville. Shelton was staggering and stumbling as he walked. At one point, he nearly fell down. Believing that there was an outstanding warrant for Moore's arrest, Officer Hill detained the men. Officer Hill verified that that there was an active warrant for Moore for his alleged failure to pay child support. He also observed that Shelton was exhibiting multiple signs of intoxication.

Officer Terry Mitchum arrived, and assisted Officer Hill in arresting Shelton and Moore. As Moore was entering Officer Hill's vehicle, he dropped a vial of a substance that appeared to be methamphetamine. Officer Mitchum searched Shelton, who was in possession of $10.00, a hollow pen containing methamphetamine residue and three small

[1] Ind. Code § 35-48-4-2(a)(2)(C).

plastic bags containing a substance tested and determined to be methamphetamine in an aggregate amount of slightly less than one gram of methamphetamine.[2] Shelton admitted that he had used approximately one-fourth gram of methamphetamine that day.

On December 31, 2003, the State charged Shelton with Dealing in a Controlled Substance and Possession of Methamphetamine, a Class D felony.[3] On March 6, 2006, Shelton was tried before a jury and found guilty as charged. On April 7, 2006, the trial court entered a judgment of conviction on the dealing count only, and sentenced Shelton to twenty years imprisonment. Shelton now appeals.

Discussion and Decision

Shelton contends that the State failed to present sufficient evidence to support his conviction. Specifically, he argues, "at most the State merely proved his possession of [methamphetamine]" but failed to establish that he possessed methamphetamine with the intent to deliver. Appellant's Br. at 16.

In reviewing a claim of insufficient evidence, we will affirm the conviction unless, considering only the evidence and all reasonable inferences favorable to the judgment, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Bethel v. State, 730 N.E.2d 1242, 1243 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of the witnesses. Id.

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[2] Indiana State Police forensic scientist Donna Roskowski testified that the methamphetamine she tested weighed 0.99 grams. However, Officer Mitchum testified that he weighed the substance at "one point seven eighth of a gram" and depleted some of it in "field testing." (Tr. 162.)

[3] Ind. Code § 35-48-4-6(a).

The State alleged that Shelton violated Indiana Code Section 35-48-4-2(a)(2)(C), which provides in relevant part: "A person who possesses, with intent to deliver … a controlled substance, pure or adulterated, classified in schedule I, II, or III … commits dealing in a schedule I, II, or III controlled substance[.]" Therefore, to convict Shelton as charged, the State was required to prove beyond a reasonable doubt that Shelton possessed a controlled substance, i.e., methamphetamine with intent to deliver it.

Intent is a mental function; accordingly, absent an admission, the fact-finder must resort to reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person's conduct and the natural consequences thereof, a showing or inference of intent to commit that conduct exists. Stokes v. State, 801 N.E.2d 1263, 1272 (Ind. Ct. App. 2004), trans. denied. Possession of a large quantity of drugs, money, plastic bags, and other paraphernalia is circumstantial evidence of intent to deliver. Wilson v. State, 754 N.E.2d 950, 957 (Ind. Ct. App. 2001). The more narcotics a person possesses, the stronger the inference that he intended to deliver it and not consume it personally. Id. (citing Love v. State, 741 N.E.2d 789, 792 (Ind. Ct. App. 2001)).

In Lampkins v. State, 682 N.E.2d 1268, 1276 (Ind. 1997), modified on rehearing on other grounds, 685 N.E.2d 698 (Ind. 1997), the Court held that the jury could infer intent to deal from evidence that "[the] defendant was in constructive possession of an amount of cocaine greater than that ordinarily carried by an individual user and that the [4.28 grams of] cocaine was packaged for sale" in a medicine bottle and a plastic bag "and sorted according to price and size"). See also White v. State, 772 N.E.2d 408, 413 (Ind. 2002) (intent to deal

shown by possession of 29 plastic bags of cocaine hidden in a car panel); Dandridge v. State, 810 N.E.2d 746, 750 (Ind. Ct. App. 2004) (intent to deal cocaine shown by possession of 10.07 grams of cocaine wrapped in eight individual packages, together with $351.38 and his admission to sales), trans. denied; Davis v. State, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003) (intent to deal shown by possession of 5.6225 grams of crack cocaine in separate bags at a gathering of people who were apparently engaging in gambling and were displaying cash), trans. denied; Livermore v. State, 777 N.E.2d 1154, 1161 (Ind. Ct. App. 2002) (intent to deal shown by defendant's admission to past sales of methamphetamine together with current possession of six bags packaged for sale); and Wilson, 754 N.E.2d at 958 (intent to deal shown by possession of 25 grams of cocaine, together with $1280.00, two pagers, razor blades and baggies).

Here, the arresting officers testified as expert witnesses for the State regarding the typical practices of methamphetamine dealers. Their testimony revealed that Shelton's possession of three individually wrapped, small amounts of methamphetamine was consistent either with personal use or re-sale. Shelton had a minimal amount of cash. The officers theorized that he had actually "sold" methamphetamine to Moore but Moore did not pay Shelton in cash because Shelton could have "owed C.V. Moore money or owed him drugs," something "common with drug dealers." (Tr. 175.)

The State also elicited repetitive testimony, sometimes despite objections from Shelton, that the officers had received "information" from unnamed sources that Shelton was "known" to deal methamphetamine. The State's witnesses, and the prosecutor in closing

argument, encouraged the jury to infer Shelton's intent in the instant case by emphasizing his "known" reputation as a methamphetamine dealer. Nevertheless, we conclude that the officers' speculation and reputation testimony falls short of sufficient evidence of probative value to establish beyond a reasonable doubt that Shelton had the intent to deal methamphetamine on December 27, 2003.

However, the State's evidence does establish that Shelton possessed methamphetamine. We therefore remand to the trial court with instructions to enter a judgment of conviction for possession of methamphetamine and sentence Shelton accordingly.

Reversed and remanded with instructions.

VAIDIK, J., and BARNES, J., concur.